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In the Supreme Court of the United States

OCTOBER TERM, 1993

RONALD FORTIN & ANOTHER,
PETITIONERS,
v.
ROMAN CATHOLIC BISHOP OF WORCESTER,
RESPONDENT.

ON A PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MASSACHUSETTS

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

In an action by a congregation claiming title to the real property and personalty of their parish, may a civil court constitutionally apply "neutral principles" in resolving that aspect of the claim predicated upon trust theories and not apply "neutal principles" to that aspect of the claim predicated upon contract theories?

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PETITION FOR WRIT OF CERTIORARI

INTRODUCTION

Petitioner respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Supreme Judicial Court of Massachusetts entered in this proceeding on January 14, 1994.

[1] As a member of the Church of St. Joseph's Committee, on behalf of himself, the other members of the committee, and the members of St. Joseph's parish.

[2] David Desroches, individually and as chairman of the Committee to Save St. Joseph's Church, and on behalf of the other members of St. Joseph's Church.

OPINIONS BELOW

The opinion of the Supreme Judicial Court of Massachusetts, which is appended hereto, is reported at 416 Mass. 781, 625 N.E.2d 1352. The opinion of the Superior Court of the Commonwealth of Massachusetts, Civil Action No. 92-1609, appended hereto, is unreported.

JURISDICTION

This case was decided and final judgment was entered by the Supreme Judicial Court of Massachusetts on January 14, 1994. The jurisdiction of this Court is invoked under Title 28 of the United States Code, section 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Constitution, Amendment I:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . ."

U.S. Constitution, Amendment XIV:

> "No State shall make or enforce any law which shall . . . deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Petitioners are members of a former Roman Catholic Church parish, Saint Joseph's, in Worcester, Massachusetts. This action commenced in the Superior Court of the Commonwealth of Massachusetts following the mandate of the Roman Catholic Bishop of Worcester to close the parish, transfer the membership, destroy the church building and sell the land.

Prior to becoming a parish, the Church of Saint Joseph was established in 1886 in the city of Worcester, Massachusetts. The founding members formed a corporation, erected a chapel, and, in 1887, began soliciting funds for a church building. Saint Joseph's parish was established in 1890. In 1891, the parish purchased land upon which to build a new church. The new church was financed solely by members of the parish.

In 1914, Saint Joseph's parishioners organized the Saint Joseph's School of Worcester Corporation (the "School Corporation"). The School Corporation was a duly formed Massachusetts corporation formed to hold title to parish real estate. That same year, the Bishop of Springfield (in whose diocese Worcester was then situated), conveyed two tracts of land to the School Corporation for consideration. In 1927, the School Corporation re-conveyed the land to the Bishop of Springfield, retaining the parcel which is the site of the present church building. Concurrent with the reconveyance, the School Corporation and the Bishop of Springfield jointly mortgaged both parcels (i.e., that conveyed by the School Corporation to the Bishop and that retained by the School Corporation) to a third party as security for a construction loan to build the present church building. Subsequently, the parishioners, acting through the School Corporation, paid the note (which obligated both the Bishop and the School Corporation) in full and funded all of the building construction costs, which came to over one million dollars.

The Roman Catholic Bishop of Worcester was created as a corporation sole in 1950, pursuant to the laws of Massachusetts. The Roman Catholic Bishop of Springfield thereafter conveyed all property situated in the newly-created Diocese of Worcester and owned by the Bishop of Springfield as a corporation sole to the Bishop of Worcester. In 1958, the treasurer of the Saint Joseph's School Corporation signed a deed conveying to the Bishop of Worcester the property upon which the parish church is situated. Allegedly, there was no vote of the School Corporation authorizing the conveyance, and the treasurer was an agent of the Bishop of Worcester.

In May, 1991, the Bishop of Worcester met with the pastor and other representatives of Saint Joseph's parish to discuss structural problems and potential repairs of the church building. In June, 1991, the Bishop's representative met with parishioners and allegedly told them that if they raised one-half of the funds necessary to repair the church building, the diocese would loan Saint Joseph's the remaining funds necessary for the repairs and the parish church would not be closed; neither would the congregation be merged with that of another parish. The parish would obviously then not be denied control and use of the real and personal property.

The members of St. Joseph's parish raised pledges in excess of $600,000. This amount was in excess of one-half the sum estimated for the repairs. Nevertheless, the Bishop of Worcester mandated that Saint Joseph's parish be shut down, and its congregation merged with another parish, whose church would become the exclusive site of worship for the former members of Saint Joseph's. As a result, the parishioners were denied the use and occupancy of their real estate and use of their personalty by the Bishop who ultimately took control of the real and personal property of the parish.

On June 1, 1992, the petitioners brought this action to determine their rights to parish real estate and personalty under trust and contract law. The trial court granted the Bishop's motion for summary judgment. The Supreme Judicial Court of the Commonwealth of Massachusetts affirmed.

The legal theories and bases of the state court decisions, effectively took the form of two counts:

1. *Ownership claims.* The first legal theory upon which relief was prayed for was in the nature of trust and equitable conversion. The petitioners asserted that the legal title to the church property held by the Bishop was subject to a resulting or constructive trust for the benefit of the parish members. The Supreme Judicial Court of Massachusetts, designating these as "the ownership claims," affirmed the trial court's grant of summary judgment. The Massachusetts Supreme Court purported to apply the "neutral principles of law" approach to the resolution of church property disputes, articu-

lated by this Court in *Jones* v. *Wolf*, 443 U.S. 595 (1979). The Court concluded that it properly exercised jurisdiction over this issue pursuant to the "neutral principles" approach, and affirmed the trial court's conclusion that the facts of record (primarily the documents relating to the property) could not support a claim of resulting or constructive trust or of equitable conversion. No trial was ever held on the issues, and the record is, therefore, not fully developed.

2. *Promise-based claims.* The second legal theory upon which relief was sought was in the nature of contract and promissory estoppel. The Massachusetts Supreme Court designated these claims the "promise-based claims," predicated upon the breach of the Bishop's alleged promise to keep the parish open if sufficient funds were raised. The trial court based its grant of the Bishop's motion for summary judgment upon the failure of the Saint Joseph parishioners to "show quantifiable monetary damages" emanating from the breach. The Massachusetts Supreme Court, however, held that the state courts did not exercise jurisdiction over this claim because "[t]o inquire into an alleged promise by the Bishop to keep a parish open or refrain from merging it with another parish [is] an impermissible intrusion into the Bishop's ecclesiastical authority."

The Bishop of Worcester ultimately confiscated the parishioners' real and personal property.

REASONS FOR GRANTING THE WRIT

The case presents a significant question, unresolved by this Court's decision in *Jones* v. *Wolf*, 443 U.S. 595 (1979), regarding the application of neutral principles of law in the resolution of contract-based claims to church property rights. More precisely, the question is whether a civil court properly may apply "neutral principles" in resolving that aspect of a congregation's claim which is predicated on trust theories, and not apply "neutral principles" in resolving that aspect of the claim which is predicated on contract theories.

The court below erroneously interpreted the rule of *Serbian Eastern Orthodox Diocese* v. *Milivojevich*, 426 U.S. 696 (1976), to preclude civil jurisdiction of any action in the nature of contract or promissory estoppel against a Roman Catholic bishop by a Roman Catholic congregation. In this case, the Bishop allegedly promised a congregation that he would keep their church open and not merge the parish with another congregation, provided that the parishioners financed renovations in a certain amount. The Bishop allegedly breached his promise after the congregation in fact arranged the financing. The Supreme Judicial Court of Massachusetts held that the state courts lacked jurisdiction over such "promise-based claims,"[3] citing *Milivojevich* in support of its conclusion that for a court "[t]o inquire into an alleged promise by a Bishop to keep a parish open or refrain from merging it with another parish was an impermissible intrusion into the Bishop's ecclesiastical authority." 625 N.E.2d at 1335.

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[3] The trial court had presumed jurisdiction over the issue, and determined that summary judgment was appropriate because:

> . . . even when adopting plaintiffs' version of the Bishop's promise, the plaintiffs have failed to show quantifiable money damages as a result of the alleged breach of this promise. Plaintiffs do not have a cognizable property interest in the church and thus did not suffer a loss as a result of the merger. Furthermore, plaintiffs do not claim that the Bishop or the Catholic Church accepted any funds or pledges from the parishoners to repair the Church.

Slip op. at 7-8 (A-15). This is a highly questionable interpretation of the common law of contracts, the modern trend of which—in Massachusetts and elsewhere—is to allow damages predicated not only upon reliance interests, but upon *expectation* interests as well. *E.g.*, *Center Garment Co., Inc.* v. *United Refrigerator Co., Inc.*, 369 Mass. 633, 341 N.E.2d 669, 674 (1976); *see also* John D.Calamari & Joseph M. Perillo, *Contracts* sec. 14-4 (2d ed. 1970). Moreover, "special" damages, foreseeable as a result of a peculiar context or relationship, have traditionally been allowed pursuant to the so-called "second rule of *Hadley* v. *Baxendale.*" Calamari & Perillo at sec. 14-5. By erroneously holding that it did not properly exercise jurisdiction over the "promise-based" claims, the Massachusetts Supreme Court precluded resolution of these issues.

The Massachusetts court wrongly construed this Court's holding in *Milivojevich* to prohibit *any* judicial inquiry into ecclesiastical mandates if the state court declines to apply the "neutral principles of law" approach articulated by this Court in *Jones* v. *Wolf*, 443 U.S. 595 (1979). The approach of *Watson* v. *Jones*, 13 Wall 679, 20 L.Ed. 666 (1872), which is one option open to a state court in light of *Jones* v. *Wolf*, requires the state court to determine whether a church's polity is "hierarchical" or "congregational." Once the court has examined the church's doctrine to the degree necessary to determine its polity, the court defers to a decision of the church's internal adjudicatory bodies. 443 U.S. at 602.

Additionally, the Bishop's promise to keep the church open was not in fact predicated upon theological or doctrinal principles, and was not contingent upon any action or forbearance which could in any reasonable sense be characterized as "religious."[4] The Supreme Judicial Court of Massachusetts claimed jurisdiction over the so-called "ownership claims" of the parishioners, and purported to apply the "neutral principles of law" approach to resolve the claims predicated upon the

[4] The argument made by the defendants below was essentially that a bishop's decision to close a parish is invariably a "pastoral" decision, and that any promise to keep a parish open is illusory because the bishop is empowered to exercise his pastoral office at any time. Def. Br. at 37. The adjective "pastoral" can plausibly be applied to any action taken by an ecclesiastically empowered individual. If this was the implied basis for the Massachusetts Supreme Court's determination that there was no civil jurisdiction over the "promise-based claims," it is a rationale never envisioned by the United States Supreme Court. Religious organizations and their hierarchical adjudicatories have always been subject to the same rules of civil law that govern other voluntary associations. "Religious organizations come before us in the same attitude as other voluntary associations for benevolent or charitable purposes, and their rights of property, or of contract, are equally under the protection of the law, and the actions of their members subject to its restraints." *Watson* v. *Jones*, 13 Wall 679, 714, 20 L.Ed. 666 (1872).

language of the deeds to the church property.[5] The "promise-based claims" predicated upon the Bishop's breach of promise should have presented a triable issue of fact under the common law of Massachusetts, no less secular in nature or content than the "ownership claims" over which the court claimed jurisdiction. The court below unconstitutionally denied the petitioners the right to adjudicate this issue according to the same "neutral principles" approach.[6] This Court has always—even in *Serbian Eastern Orthodox Diocese* v. *Milivojevich*—aknowledged that civil courts exercise juris-

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[5] The Massachusetts Court noted that under *Jones* v. *Wolf*, 443 U.S. 595 (1979), states are permitted to apply the "neutral principles of law" approach to the resolution of church property disputes. Under this approach, a court may look to such factors as statutory provisions governing the holding of property by religious associations, constitutions and by-laws of religious organizations insofar as they pertain to control of property, and the deeds to the disputed property. 443 U.S. at 603. The Massachusetts Court further noted that it had traditionally focused on the distinction between "hierarchical" and "congregational" church polities in determining jurisdiction over church property disputes. According to this approach, set forth in the case of *Watson* v. *Jones*, 13 Wall at 727, 20 L. Ed. at 676, civil courts defer to the internal adjudications of churches with a "hierarchical" church polity. The Massachusetts Court then articulated the basis for its jurisdiction over the petitioners' "ownership-based" claims arising from the deeds:

> [I]f we considered the present dispute only in terms of the traditional structural approach, we would not take jurisdiction. This is so because (1) the Roman Catholic Church is hierarchical and (2) it maintains an internal system of tribunals for resolution of disputes. . . . If taking jurisdiction is proper, then, it must be be so under the neutral principles of law approach. Thus, we must be able to resolve the disputes without entangling ourselves in questions of religious doctrine, polity, and practice, and rely instead on objective, well-established concepts of trust and property law. . . . In the circumstances of this case, we believe the question of ownership properly may be resolved under such principles, and hence we need not determine whether the traditional approach of Massachusetts cases distinguishing the treatment of disputes in congregational and hierarchical churches need be applied.

625 N.E.2d at 1356-57.

[6] See *supra*, note 1. The rhetorical form of the question on appeal was whether "[p]ledges are enforceable obligations . . . and constitute detriment." (Pet. br. at 29; Def. br. at 39.)

diction in ecclesiastical property disputes when there are allegations such as "fraud, collusion, or arbitrariness." *Milivojevich*, 426 U.S. at 721; *Jones* v. *Wolf*, 443 U.S. at 609 n.8; *Gonzalez* v. *Roman Catholic Archbishop of Manila*, 280 U.S. 1, 16-17 (1929). *See also*, *Milivojevich*, 426 U.S. at 726-27 (Rehnquist, J., dissenting) (asserting that civil jurisdiction properly obtains even in matters of ecclesiastical governance if ecclesiastical organizations flagrantly break their own rules):

> Unless civil courts are to be wholly divested of authority to resolve conflicting claims to real property owned by a hierarchical church, and such claims are to be resolved by brute force, civil courts must of necessity make some factual inquiry [into the basis of an ecclesiastical hierarchy's decisions]. . . .
> If civil courts are to be bound by any sheet of parchment bearing the ecclesiastical seal and purporting to be a decree of a church court, they can easily be converted into handmaidens of arbitrary lawlessness.

Id.

The effect of this misapplication of *Milivojevich* is to violate the Establishment Clause of the First Amendment to the United States Constitution, which precludes state action which grants special privileges to one religious group (in this case, the diocesan hierarchy, and the Roman Catholic Church generally) over another (in this case the lay parishioners, and non-Roman Catholic churches generally)[7], or which favors

[7] The favoritism in regard to non-Catholic religions would of course take the form of favoring the Roman Catholic Church generally by allowing its hierarchy exemption from common law actions such as promissory or equitable estoppel to which members of other ecclesiastical hierarchies might nevertheless be subject. Even if a similar exemption from secular-based common law actions were given broadly to all religious hierarchies, the favoritism granted to leaders of hierarchical churches over leaders of non-hierarchical churches is far from the principles established in *Watson* v. *Jones*, 13 Wall 679, 20 L. Ed. 666 (1872), the case which first distinguished between "hierarchical" and "congregational" church polities for purposes of property disputes.

religion generally over nonreligion.[8] The misapplication also effectively violates the Equal Protection Clause of the Fourteenth Amendment, insofar as the lay parishioners are deprived of their rights to judicial relief from breaches of secular-based promises made in secular contexts by religious authorities, by reason of the position held by the defendant in a religious hierarchy.

This Court's ruling in *Jones* v. *Wolf* implies that in any action alleging a breach of contract by a religious organization, even a breach by an official of a "hierarchical" church of a contract with members of the church, a civil court must exercise jurisdiction according to the same legal principles applicable in any like action alleging a breach of contract by any voluntary secular organization. Even if there is evidence sufficient to demonstrate that organizational members, by voluntarily maintaining membership, relinquish any expectation that members of the organizational hierarchy might be bound at law or in equity by any promise that the hierarchical official might make[9], courts must exercise jurisdiction over this factual question as they would over any other, looking to church doctrine for the limited purpose of discerning an evidentiary basis for the attitude asserted.

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[8] To the extent that ecclesiastical bodies enter the realm of secular activities by making contracts, buying and selling property, or engaging in commerce, they are subject to the same laws and the same application of those laws as any secular organization. *See supra*, note 2; *see generally, Corporation of the Presiding Bishop* v. *Amos*, 483 U.S. 327, 340-46 (1987)(Brennan, J., concurring).

[9] This narrow theological question is properly a question of fact before a civil court. *Watson* v. *Jones; Jones* v. *Wolf*. The episcopal despotism inherent in the assertion that Roman Catholics cannot reasonably expect their bishops to be bound by contractual promises is not supported by Roman Catholic ecclesiology. *See generally*, The Second Vatican Council's *Decree on Bishops' Pastoral Office in the Church*, reprinted in *The Documents of Vatican II* (Walter M. Abbott, S.J., ed. 1966); Wilhelm Breuning, *Apostolic Succession*, in *The Concise Sacramentum Mundi* (Karl Rahner, ed. 1989).

This Court's ruling in *Jones* v. *Wolf* also implies that a state court may not adopt the "neutral principles of law" approach to the resolution of church property disputes in a manner that is inherently inconsistent, purporting to apply neutral principles to the language of the deeds, while refusing to apply like neutral principles to the contract-based theories upon which the same legal action is predicated. In any event, such an inconsistent application could not be constitutionally permissible absent clear and convincing evidence that the ecclesiology of the religious organization was so extremely autocratic as to preclude any reasonable expectation that any promise by a member of the church hierarchy would be meaningful in any ordinary sense.[10]

[10] See *supra*, note 7.

CONCLUSION

For the foregoing reasons a writ of certiorari should issue to review the judgment of the Supreme Judicial Court of Massachusetts.

Respectfully submitted,

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APPENDIX A

RONALD FORTIN[1] & another[2] *vs.* ROMAN CATHOLIC BISHOP OF WORCESTER.

Worcester. September 9, 1993. — January 14, 1994.

Present: Liacos, C.J., Wilkins, Abrams, Nolan & Lynch, JJ.

CIVIL ACTION commenced in the Superior Court Department on June 1, 1992.

The case was heard by *Charles M. Grabau, J.*, on a motion for summary judgment.

The Supreme Judicial Court on its own initiative transferred the case from the Appeals Court.

Stephen Gordon (Roberta Fitzsimmons with him) for the plaintiffs.

Samuel R. DeSimone (Dale R. Harger with him) for the defendant.

LIACOS, C.J. This case presents a dispute between two parishioners of the former parish of St. Joseph's Church in Worcester and the Roman Catholic Bishop of Worcester (Bishop). On June 1, 1992, the parish of St. Joseph's was merged with the parish of Notre Dame, in accordance with a decision by the Bishop. In a complaint of the same date, the plaintiffs alleged that the Bishop's decision to merge the parishes wrongfully deprived them of property to which they were equitably entitled, and constituted a breach of an oral contract between the Bishop and the plaintiffs. They sought an injunction prohibiting the Bishop from taking any action in regard to the real and personal property of St. Joseph's

[1] As a member of the Church of St. Joseph's Committee, on behalf of himself, the other members of the committee, and the members of St. Joseph's parish.

[2] David Desroches, individually and as chairman of the Committee to save St. Joseph's Church, and on behalf of the other members of St. Joseph's Church.

Church. They also sought an order of specific performance of the alleged oral contract and damages, and declaratory relief.

The Bishop responded to the plaintiffs' complaint with a motion for summary judgment. The Bishop advanced three main arguments why he was entitled to judgment: (1) the First Amendment to the United States Constitution prohibited a civil court from taking jurisdiction over the matter; (2) the plaintiffs lacked standing to maintain the action; and (3) the plaintiffs could not prevail on the ments on any of their legal claims. A judge in the Superior Court found that the First Amendment imposed no restraints on the court's jurisdiction, but he allowed the Bishop's motion, based on his conclusion that the plaintiffs could not prevail on any of their legal claims. The plaintiffs filed a timely appeal, and we transferred the case here on our own motion. We agree with the judge below that the Bishop was entitled to summary judgment, although we hold that the court lacked subject matter jurisdiction over some of the parishioner's claims.

We begin with the undisputed facts established by the plaintiffs. On September 26, 1886, the Church of St. Joseph was established in the Wall Street area of Worcester. The founding members were the pastor, Father Brouillet, and five communicants. Shortly thereafter, a church school was established. By June of 1887, an effort was undertaken to build a church that would replace the original chapel. In December, 1890, St. Joseph's parish was established. In May, 1891, St. Joseph's parish purchased a parcel of land on Wall Street, on which the members of the St. Joseph's parish voted to construct a new church and other facilities. Members of the parish financed the project completely.

Early in this century, two tracts of land bounded by Hamilton, Dupont, Chrome, and Plantation Streets in Worcester (Hamilton Street property) were conveyed to the Bishop of Springfield, in whose diocese St. Joseph's Church belonged. The Bishop then conveyed this land to the St. Joseph's School of Worcester Corporation. Parishioners formed the School

Corporation in 1914 to hold title to parish real estate and to manage the internal affairs of the parish.

In 1927, the School Corporation reconveyed the parcel to the Bishop of Springfield, retaining only a parcel at the corner of Chrome and Plantation Streets. The School Corporation and the Bishop of Springfield then jointly mortgaged both parcels as security for a $325,000 note to build a new church on the property. The parishioners funded the construction of the building, which cost over $1,000,000. This structure served as the parishioner's house of worship until the Bishop's decision to merge St. Joseph's with another parish took effect.

The General Court created the Roman Catholic Bishop of Worcester as a corporation sole in 1950. St. 1950, c. 197. Thereafter, the Bishop of Springfield conveyed, by an omnibus deed, all of the property situated in the diocese of Worcester to the Bishop of Worcester. In 1958, the treasurer of the School Corporation signed a deed which conveyed the corner parcel of the Hamilton Street property to the Bishop of Worcester. At this time (and until the present day) the Bishop held legal title to all the property at issue in this dispute.

In May of 1991, the Bishop met with the pastor of St. Joseph's and certain parish members to discuss some structural problems that had developed with the church building. The following month, a representative of the Bishop, Monsignor Tinsley, met with the parishioners and allegedly told them that if they raised one-half of the funds needed to repair the church, the diocese would lend the parishioners the remaining funds, and the church would remain open.

The plaintiffs claim to have raised pledges of over $600,000. The Bishop nonetheless decided to merge St. Joseph's with another Roman Catholic parish in Worcester, Notre Dame. The new parish, Notre Dame-St. Joseph, controls the property of both former parishes and uses the facilities of the former Notre Dame as the sole place of worship for the merged parishes.

1. *The plaintiffs' claims.* On the date that the merger took

effect, June 1, 1992, the plaintiffs commenced this action. The numerous causes of action (which were not divided into counts in the complaint) derive from two basic assertions by the plaintiffs. The first is that the plaintiffs are the equitable owners of the real estate and personalty of St. Joseph's parish. Conceding that the Bishop holds legal title to all of the property in question, the plaintiffs claim to be equitable owners under a theory of resulting trust or constructive trust.[3] Based on their claim that they equitably own the property, the plaintiffs further claim that the Bishop is liable to them for conversion. We shall refer to these claims as "the ownership claims."

The second basic assertion is that the Bishop breached his promise to the plaintiffs that he would not close the parish if the parishioners raised sufficient funds to repair the church. Emanating from this are claims of breach of contract and promissory estoppel and requests for specific performance and damages. We shall refer to these as the "promise-based claims."

2. *Jurisdiction.* The first question facing the judge below and facing this court today is whether this dispute properly belongs in the civil courts of the Commonwealth. The judge below held that he had "jurisdiction to hear the present action." We believe this conclusion sweeps too broadly.

We begin our discussion with the long-recognized principle that "the First Amendment prohibits civil courts from intervening in disputes concerning religious doctrine, discipline, faith, or internal organization." *Alberts* v. *Devine*, 395 Mass.

[3] As a corollary to their argument that they are equitable owners of the property, the plaintiffs devote much attention to the issue of their status as a corporate entity, either as successors to some original corporation (the existence of which is challenged by the defendant) or as successors to the School Corporation. In deciding that summary judgment was appropriate on the counts arising under a resulting or constructive trust theory, the judge below appears to have based his conclusion on his determination that the plaintiffs lacked corporate status. In our view, the questions whether these corporations exist and whether the plaintiffs succeed to the interests of either of them are not material ones, because, as we shall discuss below, the Bishop is both the legal and beneficial owner of the property.

59, 72 (1985), and cases cited. As to the plaintiffs' promise-based claims, the judge below ought not to have looked beyond this principle to dismiss those counts. To inquire into an alleged promise by the Bishop to keep a parish open or refrain from merging it with another parish was an impermissible intrusion into the Bishop's ecclesiastical authority. See *Serbian E. Orthodox Diocese for the U.S. & Can.* v. *Milivojevich*, 426 U.S. 696, 708-709 (1976). See also *Parent* v. *Roman Catholic Bishop of Portland*, 436 A.2d 888, 890-891 (Me. 1981) (no jurisdiction over dispute regarding Bishop's alleged promise to provide church services).

As to the plaintiffs' ownership claims, such a cursory review is not warranted. Although "the First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes," *Wheeler* v. *Roman Catholic Archdiocese of Boston*, 378 Mass. 58, 63, *cert. denied*, 444 U.S. 899 (1979), quoting *Presbyterian Church* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 449 (1969), this circumscription is not absolute, and courts have recognized instances where civil resolution of church property disputes may occur without offense to the First Amendment. Probably the most notable departure from the traditional notion that civil courts ought not resolve church property disputes came with *Jones* v. *Wolf*, 443 U.S. 595, 602 (1979). In that case, the United States Supreme Court held that States are constitutionally entitled to adopt "neutral principles of law" to resolve church property disputes. *Id.* at 602-603. Thus, if a dispute can be resolved without inquiry into matters of religious doctrine or polity, a court may examine such sources as "(a) statutory provisions governing the holding of property by religious corporations; (b) the constitutions and by-laws of the religious organizations involved, especially in so far as they pertain to the ownership and control of church property; and (c) the deeds to the property in question," to resolve the dispute. *Antioch Temple, Inc.* v. *Parekh*, 383 Mass. 854, 867 (1981), citing *Jones* v. *Wolf*, *supra* at 599-601.

This court has never expressly taken the "neutral principles of law" approach to a church property dispute.

As an alternative, this court has, in the past, focused primarily on the distinction between hierarchical and congregational church structures in determining when jurisdiction is appropriate.[4] See *Antioch Temple, Inc.*, *supra* at 860-864; *Wheeler*, *supra* at 61-62. The Supreme Court has recognized the validity of this distinction. See *Jones* v. *Wolf*, *supra* at 602; *Serbian E. Orthodox Diocese for the U.S. & Can.*, *supra* at 724-725; *Watson* v. *Jones*, 80 U.S. (13 Wall.) 679, 733-734 (1871). We have noted that "[i]t is in disputes involving hierarchical churches that civil courts must tread more cautiously, for the First Amendment 'permits hierarchical [churches] to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters.'" *Antioch Temple, Inc.*, *supra* at 861, quoting *Wheeler*, *supra* at 61.

The judge below did not inquire into the question of church structure, reasoning that *Jones* v. *Wolf*, *supra*, "essentially . . . overturned" *Wheeler*. In our view this position overstates the holding of *Jones* v. *Wolf*. As the Bishop correctly notes, *Jones* v. *Wolf*, *supra*, does not constitutionally *obligate* courts to employ the neutral principles approach. Rather, it allows courts to do so without violating the First Amendment. Additionally, our decision in *Antioch Temple, Inc.*, *supra*, makes it clear that this court has not chosen to adopt the "neutral principles" approach exclusively. *Id.* at 867-868. We need not adopt this approach in this case as the exclusive approach to such disputes in the future.

The Bishop is correct when he states that, if we considered the present dispute only in terms of the traditional structural approach, we would not take jurisdiction. This is so because (1) the Roman Catholic Church is hierarchical and (2) it

[4] For an explanation of the basic differences between the structures, see *Wheeler* v. *Roman Catholic Archdiocese of Boston*, 378 Mass. 58, 62 n.2, *cert. denied*, 444 U.S. 899 (1979). See also *Antioch Temple, Inc.* v. *Parekh*, 383 Mass. 854, 860-861 (1981).

maintains an internal system of tribunals for resolution of disputes. Such facts were presented in a sworn affidavit of the Bishop which was appended to his motion for summary judgment. See also *Wheeler, supra* at 62.[5] If taking jurisdiction is proper, then, it must be so under the neutral principles of law approach. Thus, we must be able to resolve the dispute without entangling ourselves in questions of religious doctrine, polity, and practice, and rely instead on objective, well-established concepts of trust and property law. See *Jones* v. *Wolf, supra* at 604. In the circumstances of this case, we believe the question of ownership properly may be resolved under such principles, and hence we need not determine whether the traditional approach of Massachusetts cases distinguishing the treatment of disputes in congregational and hierarchical churches need be applied.

3. *Application of neutral principles of law to the plaintiffs' claims of ownership.* In allowing the Bishop's motion for summary judgment, the judge below dismissed the ownership claims because the plaintiffs had failed to show that they were the successors in interest to any beneficial interest that either the original corporation (if one existed) or the School Corporation retained in the property. In our view, the same conclusion (i.e., that summary judgment was appropriate) is more easily

[5] We pause here to address an issue which arose after the briefs in this case were filed and which pertains to this issue. Around the time of oral argument, the plaintiffs filed a motion requesting that we vacate the judgment and a motion to remand the case to the Superior Court for further proceedings, on the ground that they had obtained evidence tending to show that certain representations made in the Bishop's affidavit in regard to the structure of the church were contradicted by certain statements made in court documents in an unrelated tort case involving the Bishop. Even assuming that the plaintiffs' motion was properly made under Mass.R. Civ. P. 60 (b) (2) and (6), 365 Mass. 828 (1974), it is clear that the new "evidence," at best, goes toward establishing that the Roman Catholic Church is not hierarchical. Jurisdictionally, this would favor the plaintiffs, i.e., less of an obstacle would be posed to the court's authority to hear the case. See *Wheeler, supra* at 61. Given our conclusion that it was permissible for the judge to take jurisdiction over the ownership claims (and the fact that the "evidence" in no way concerns the jurisdictional problem with the promised-based claims), we therefore deny the motions.

reached by the determination that the plaintiffs have failed to allege any supportable fact indicating that the Bishop does not hold all legal and beneficial interest in the property. The judge's ruling that the plaintiffs would not succeed to any interest not held by the Bishop, is therefore a secondary, but equally sustainable basis for the allowance of the Bishop's motion for summary judgment.

Under the neutral principles of law approach, we may examine any relevant statute, the deeds to the property in question, and any pertinent constitutions or by-laws of the organizations involved. *Antioch Temple, Inc., supra* at 867. We begin, then, by noting that the Bishop holds record title to all of the disputed property. The question we must consider is whether the facts as shown of record on the motion for summary judgment could support their claim of equitable ownership. *Kourouvacilis* v. *General Motors Corp.*, 410 Mass. 706, 711-712 (1991)

There is no basis for the plaintiffs' claim that a resulting trust arose from the 1927 conveyances.[6] A resulting trust in real estate arises where one party furnishes the consideration to purchase property, not intending a gift or advancement, yet title is taken in the name of another. See *Meskell* v. *Meskell*, 355 Mass. 148, 150 (1969); *Davis* v. *Downer*, 210 Mass. 573, 575, (1912). "A resulting trust must arise, if at all, at the time of the execution of the deed." *Dwyer* v. *Dwyer*, 275 Mass. 490, 494 (1931). In the 1927 conveyances, the School Corporation granted all of its interest in certain property to the Bishop of Springfield. As such, it falls outside the traditional boundaries of a resulting trust where one party furnishes the consideration and another party takes title. The only allegation made by the plaintiffs to justify their claims of a resulting trust is their contention, that "there was no intention to make a gift." Unsupported by any evidence what-

[6] The plaintiffs state in their reply brief that "the conveyances giving rise to the resulting trust were the 1927 conveyances." In that year, the School Corporation conveyed all but a corner parcel of the Hamilton Street property to the Bishop of Springfield.

soever, this fails to create a genuine issue of fact sufficient to prevent judgment as a matter of law. *Meskell, supra* at 150-151 ("By the great weight of authority no resulting trust arises [when a party voluntarily transfers an undivided interest in realty, not money]"). See also *Kourouvacilis* v. *General Motors Corp., supra* at 711-712.

Likewise the plaintiffs' claims of equitable ownership based on a theory of constructive trust were properly dismissed. Under Massachusetts law, a court will declare a party a constructive trustee of property for the benefit of another if he acquired the property through fraud, mistake, breach of duty, or in other circumstances indicating that he would be unjustly enriched. *Nessralla* v. *Peck*, 403 Mass. 757, 762-763 (1989). The plaintiffs have presented no evidence of wrongdoing or unjust enrichment.[7] Instead, the plaintiffs attempt to manipulate the requirements of summary judgment as set forth in *Kourouvacilis, supra,* so that the Bishop's inability to prove the "absence of wrongdoing" renders summary judgment inappropriate. The plaintiffs did not set forth any facts to prevent the entry of summary judgment against them on this count.

We note in closing that, undoubtedly due to inadvertence, the judge below did not enter a declaratory judgment regarding the status of the property. We therefore remand this case to the Superior Court for entry of judgment declaring that the parishioners have no legal or equitable interest in the disputed property. The plaintiffs' promise-based claims are dismissed for want of jurisdiction. As to the plaintiffs' ownership claims, the judgment of the lower court is affirmed.

So ordered.

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[7] The plaintiffs did contend that the 1958 deed to the Bishop, conveying all of the School Corporation's remaining interest in the property, evidences wrongdoing on its face. The supposed wrongdoing was two fold: (1) the deed was executed by the School Corporation's treasurer, who was also the pastor of the parish, and thus, allegedly, an agent of the Bishop; and (2) no authorizing vote for the conveyance occurred. As to the vote, the deed indicates that it occurred, and the plaintiffs presented no evidence to suggest that it did not. As to the charge that the treasurer was the pastor, the plaintiffs have set forth no acceptable legal theory for why this fact could constitute "wrongdoing."

APPENDIX B

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS

SUPERIOR COURT
CIVIL ACTION
NO. 92-1609

RONALD FORTIN[1] & DAVID DESROCHES[2]
v.
TIMOTHY HARRINGTON[3]

AMENDED MEMORANDUM OF DECISION AND ORDER ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

In the underlying action, Plaintiffs Ronald Fortin and David Desroches assert a number of claims against Timothy Harrington, the Roman Catholic Bishop of the Diocese of Worcester ("Bishop"),concerning the ownership of St. Joseph's church property. The defendant now moves for summary judgment on the grounds that: (1) this court lacks subject matter jurisdiction over this dispute; (2) plaintiffs do not have standing to bring this action; and (3) plaintiffs can not succeed on the merits under any legal theory. For the following reasons, the defendant's motion for summary judgment is allowed.[4]

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[1] On behalf of himself and other members of St. Joseph's Parish and St. Joseph's Committee.

[2] Individually and as Chairman of the Committee to Save St. Joseph's Church and on behalf of other members of the St. Joseph's Church.

[3] The Roman Catholic Bishop of the Diocese of Worcester.

[4] Defendant has raised the issue of standing, in his motion. Neither party, however, has adequately addressed the issue of whether Fortin and Desroches have the legal capacity to represent an unincorporated association of individuals. This court has not addressed this issue since it has not been briefed.

BACKGROUND

The undisputed material facts as established by the affidavits and verified pleadings are as follows. The Church of St. Joseph ("Local Church") was established on or about September 26, 1886. The Local Church constructed a chapel on land that it had purchased. In December of 1890, the Local Church established St.Joseph's Parish. In 1891, St. Joseph's Parish purchased land on Wall Street in Worcester for the purpose of constructing a new church on Wall Street in Worcester. Members of the St. Joseph's Parish financed this project.

Prior to 1950, St. Joseph's Parish was within the Roman Catholic Diocese of Springfield. In 1912, two families conveyed to the Roman Catholic Bishop of Springfield, the entire block bounded by Chrome, Dupont, Plantation and Hamilton Streets (the "Hamilton Street property").

In 1914, the St. Joseph's School Corporation ("School Corporation") was established. In 1914, the Bishop of Springfield conveyed the Hamilton Street property to the School Corporation.

In 1924, members of the parish voted to raise money to construct a larger building to meet their needs. Parish members also voted to purchase additional real estate to construct a larger church. Plaintiffs claim that the parish purchased property on Hamilton Street from the Bishop of Springfield through the School Corporation for the purpose of building the new church. Construction for the church commenced in 1926.

In 1927, the School Corporation reconveyed most of the Hamilton Street property to the Bishop of Springfield. The School Corporation retained title to a parcel at the intersection of Chrome and Plantation Streets. Immediately after the conveyance, the Bishop of Springfield and the School Corporation jointly mortgaged the entire tract to State Mutual Life Assurance Company to secure their note.

The General Court created the Roman Catholic Bishop of

Worcester, a corporation sole. The Bishop of Springfield then conveyed by an omnibus deed to the Bishop of Worcester all of the property in the Diocese of Worcester. In 1958, the School Corporation conveyed to the Bishop of Worcester all of its remaining property, the parcel at the intersection of Chrome and Plantation Streets.

In May of 1991, the Pastor of St. Joseph's and certain parish members met with the defendant to discuss the problems concerning structural damage to the church. At a general parish meeting on June 2, 1991, Monsignor Edmond T. Tinsley, a representative of the Bishop, allegedly told the parishioners that if the parish "raised one-half of the funds, the diocese would lend us [the parish] the other half . . and that if we [the parish] could do this, we the parish] would be guaranteed that we [the parish] could keep the church."[5] The parishioners claim to have raised pledges in excess $600,000. On June 1, 1992, St. Joseph's Parish was merged with the Notre Dame Parish in Worcester. The property of both parishes, including St. Joseph's Church, remain under the jurisdiction of the pastor of the Notre Dame-St. Joseph Parish.

DISCUSSION

Summary judgment shall be granted when there are no material facts in dispute and the moving party is entitled to judgment as a matter of law. *Cassesso* v. *Comm'r of Correction*, 390 Mass. 419, 422 (1983); *Community Nat'l Bank* v. *Dawes*, 369 Mass. 550, 553 (1976); Mass. R. Civ. P. 56(c). The moving party bears the burden of affirmatively demonstrating the absence of a triable issue, and that he or she is entitled to judgment as a matter of law. *Pederson* v. *Time, Inc.*, 404 Mass. 14, 16-17 (1989). When the party moving for summary judgment is the defendant, this burden may be met

[5] The Bishop claims that Monsignor Tinsley only promised that he, the Bishop, would permit the repairs if a feasibility study were conducted and if the parishioners bore the cost of repairs.

by either submitting affirmative evidence that negates an essential element of the plaintiff's case or by demonstrating that proof of that element is unlikely to be forthcoming at trial. *Flesner* v. *Technical Communications Corp.*, 410 Mass. 805 (1991). *Kourouvacilis* v. *General Motors Corp.*, 410 Mass. 706, 716 (1991). Once the moving party demonstrates the absence of a triable issue, the party opposing the motion must respond and allege specific facts which establish the existence of a material issue of fact in order to defeat the motion. *Pederson, supra* at 17.

Defendants first allege that this court lacks subject matter jurisdiction over the present action on the grounds that the First Amendment mandates that plaintiffs' complaint be dismissed. For this proposition defendant relies on *Wheeler* v. *Roman Catholic Archdiocese of Boston*, 378 Mass 58, US *cert. den.* 444 U.S. 899 (1979). This case, however, has essentially been overturned by the Supreme Court in *Jones* v. *Wolf*, 443 U.S. 595 (1979). Courts of this Commonwealth may now exercise jurisdiction in church property disputes through the application of "neutral principles of law." *Antioch Temple Inc.* v. *Parekh*, 383 Mass. 854 (finding that a superior court judge properly exercised jurisdiction over an action concerning the control and use of church property). Under the "neutral principles of law analysis," the court may not inquire into religious doctrine but may examine such sources as: (a) statutory provisions governing the holding of property by religious corporations; (b) the constitutions and by-laws of the religious organizations involved, especially in so far as they pertain to the ownership and control of church property; and (c) the deeds to the property in question. *Antioch, supra* at 867. Accordingly, since the court is authorized to apply "neutral principles of law" to resolve property disputes involving religious organizations, this court finds that it has jurisdiction to hear the present action.

The central issue in this dispute concerns whether the parishioners have a cognizable interest in the church property. Defendants have presented deeds to the property in question

which show that the Roman Catholic Bishop of Worcester holds legal title to all the property. Plaintiffs contend, however, that the members of the parish are the equitable owners of the property. Plaintiffs claim that they paid the consideration for the real estate at issue, owned it through the local School Corporation, and only conveyed a part of the Hamilton Street property to the Bishop of Springfield in 1927. Plaintiffs also claim that the transaction of 1958, whereby the School Corporation conveyed all remaining property to the Bishop was unauthorized and invalid. Plaintiffs contend that Saint Joseph's Parish Corporation, as successors to the School Corporation, are entitled to a resulting trust or constructive trust in their favor.

Defendants have presented evidence which establishes that the Church of St. Joseph has not registered as a religious society/corporation.[6] G.L. c. 67 §44 requires a religious organization to register with the Secretary of State and the Registry of Deeds when forming a body corporate. Plaintiffs have failed to present any evidence to show that the Church of St. Joseph is a recognized legal entity or that it is the successor to Saint Joseph School Corporation. As such, I find that plaintiffs have not shown any legal or equitable interest in the property. Accordingly, defendant's motion for summary judgment is allowed as to all claims under tort or conversion theories.[7] See *Kourouvacilis, supra* at 716 (holding that a moving party is entitled to summary judgment if it demonstrates by evidence, unmet by countervailing material, that the opposing party has no reasonable expectation of proving an essential element of that party's case).

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[6] Records from the Office of the Secretary of State certify that the following names are not and were never registered as a corporation with the Commonwealth: St. Joseph's Church; St. Joseph's Parish; Chapel of St. Joseph; Parish of St. Joseph; Mission of St. Joseph; and Church of St. Joseph. See *Commonwealth* v. *Hogan*, 7 Mass. App. Ct. 236, 251 (1979) (stating that "negative" evidence that a diligent search has revealed that certain records cannot be found is admissible.)

[7] Plaintiffs have not detailed their claims in numbered counts.

Plaintiffs have also asserted a number of contract and equitable claims (i.e. express contract, promissory estoppel, unjust enrichment, and quantum meruit) arising from the Bishop's alleged promise not to close the church if the parishioners received funding for the repairs. Plaintiffs, in addition to a request for a declaratory judgment and an injunction against the Bishop, seek specific performance of the Bishop's promise and monetary damages.

This court finds that summary judgment is proper on any claims relating to the Bishop's promise concerning the merger of St. Joseph and Notre Dame. Plaintiffs conceded at trial that the Bishop had the right and the authority to merge the parishes. This court finds that even when adopting plaintiffs' version of the Bishop's promise, the plaintiffs have failed to show quantifiable monetary damages as a result of the alleged breach of this promise. Plaintiffs do not have a cognizable property interest in the church and thus did not suffer a loss as a result of the merger. Furthermore, plaintiffs do not claim that the Bishop or the Catholic Church accepted any funds or pledges from the parishoners to repair the Church.

Plaintiffs have also failed to sufficiently allege that: (1) by relying on the Bishop's promise they were damaged by raising pledges (promissory or equitable estoppel); (2) they conferred a benefit to the Bishop in the expectation of receiving payment (quantum meruit); and (3) the Bishop or the Roman Catholic Church was unjustly enriched by their actions (unjust enrichment). Accordingly, summary judgment is proper on any contract or equitable claim arising from the Bishop's promise concerning the merger. Based on the submissions, the court also finds that there is no basis for ordering specific performance nor injunctive relief.

The plaintiffs also allege a violation of G.L. c. 67 and/or G.L. c. 180 on the grounds that the conveyances by the School Corporation to the Bishop of Worcester were unauthorized transfers of major assets without the requisite authorizing vote of the members of the corporation. Plaintiffs, however, have failed to present any evidence to show that any of the convey-

ances by the School Corporation were unauthorized. As such, summary judgment is proper on any claims under G.L. c. 67 or G.L. c. 180.

ORDER

For the foregoing reasons, it is hereby ORDERED that the defendant's motion for summary judgment is ALLOWED. Plaintiffs' prayer for injunctive relief is DENIED.

s/CHARLES M. GRABAU
CHARLES M. GRABAU
Justice of the Superior Court

DATED: October 16, 1992.

APPENDIX C

AMENDMENTS TO THE CONSTITUTION

AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or of the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

AMENDMENT XIV

Section 1.

All persons born or naturalized in the United States, and subject to the Jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Supreme Court, U.S.
FILED
MAY 13 1994
OFFICE OF THE CLERK

(2)

No. 93-1628

IN THE
Supreme Court of the United States
October Term, 1993

RONALD FORTIN & ANOTHER,
Petitioners,
v.
ROMAN CATHOLIC BISHOP OF WORCESTER,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME JUDICIAL COURT OF MASSACHUSETTS

BRIEF IN OPPOSITION

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May 13, 1994

BATEMAN & SLADE, INC BOSTON, MASSACHUSETTS

25 pp

QUESTION PRESENTED

Does the First Amendment bar adjudication of a dispute over a bishop's promise to keep a parish open?

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No. 93-1628

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PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME JUDICIAL COURT OF MASSACHUSETTS

BRIEF IN OPPOSITION

STATEMENT OF THE CASE

The respondent, Roman Catholic Bishop of Worcester (Bishop), presents the following facts to correct inaccuracies and omissions in the statement of the case made by the petitioners, Ronald Fortin and David Desroches (Parishioners). In the following statement, all facts not taken from the opinion of the Massachusetts Supreme Judicial Court, *Fortin* v. *Roman Catholic Bishop of Worcester*, 416 Mass. 781 (1994) (Petition A-1) or the trial court (Petition A-10) are drawn from uncontroverted affidavits or undisputed documents.

1. *The Roman Catholic Church.* The Roman Catholic Church is a hierarchical organization. Each diocese and parish is a purely ecclesiastical subdivision of the church. Under church law, a parish *cannot* exist as an autonomous unit.

The Roman Catholic Church has a well-articulated system of canon law, including adjudicatory procedures for the resolution of disputes. Under this system, the Parishioners are entitled to lodge an appeal of the Bishop's decision to merge their parish and close the parish church. The appeal would be heard by a tribunal known as the Congregation for Clergy, which adjudicates disputes such as the present one.

2. *Parish history*. St. Joseph's parish was established in Worcester, Massachusetts, in 1890. In 1891 the parish group purchased land, and later it financed construction of a church on the land. The parish became part of the Diocese of Springfield, Massachusetts.

In 1924 the parish voted to raise funds for a new church on a new site. By 1929 the new church (St. Joseph's Church) had been built on Hamilton Street in Worcester. The church occupied part of a tract of land owned by the Roman Catholic Bishop of Springfield. The parish moved to the new church.

In 1950 the Holy See created the Diocese of Worcester. The parish of St. Joseph's Church became part of the new diocese.

In 1991 the church needed substantial repairs. The Bishop met with the pastor and parish members to discuss the problem. Later the Bishop's representative met with certain parish members. Allegedly the Bishop's representative said that if the parish members raised half of the funds needed to repair the church, the diocese would lend the other half and the church would remain open. The parish then mounted a pledge drive and obtained sufficient pledges. After further deliberation, however, the Bishop decided to merge St. Joseph's parish with another parish and to designate the other parish's church as the sole place of worship for the merged parish.

The merger took effect June 1, 1992. The Parishioners commenced this action the same day.

In their description of parish history, the Parishioners make several serious errors. First, they wrongly state that the founders of the parish formed a corporation in the 1880's. Petition 3. The trial court found that no corporation had been formed Petition A-14, and the Supreme Judicial Court did not upset that finding. *Fortin* v. *Roman Catholic Bishop of Worcester*, 416 Mass. at 784, n.3.

A misleading assertion appears in the very first paragraph of the Parishioners' statement of the case. There they assert as a fact that the Bishop issued a "mandate" to "destroy the church building and sell the land". Petition 2. Since this assertion has no bearing on the question presented, the Bishop assumes it was included to create sympathy for the Parishioners.

The Parishioners' unsworn complaint alleged that the Bishop planned to demolish the church and sell the land. The allegation was never proven or supported with any evidence. The only evidence concerning any episcopal "mandate" was the Bishop's affidavit to the effect that he ordered a merger of St. Joseph's parish with another parish.

The Parishioners conclude their statement of the case as they began it, with a misleading assertion designed to elicit sympathy. They assert that the Bishop "confiscated the parishioners' real and personal property". Petition 5. "Confiscation" implies seizure of another's property. Since the lower courts have ruled that the Bishop owns St. Joseph's Church, he cannot be said to have "confiscated" it.

3. *The property*. In 1912, before creation of the Diocese of Worcester, the Bishop of Springfield acquired title to an entire city block in Worcester. In 1914 he conveyed it to St. Joseph's School of Worcester, a corporation (School Corporation).

In 1927 the School Corporation conveyed most of the block back to the Bishop of Springfield. The School Corporation

retained title only to a corner lot at the intersection of Chrome Street and Plantation Street. The Parishioners wrongly assert that St. Joseph's Church was built on the retained corner lot. Petition 3. In fact a school was built there. St. Joseph's Church was built not on the corner parcel retained by the School Corporation but on the main parcel reconveyed to the Bishop in 1927.

In 1950 the Bishop of Springfield conveyed the main parcel, including the church on Hamilton Street, to the newly created Bishop of Worcester. In 1958 the School Corporation conveyed the remainder of the block, the lot at the corner of Chrome Street and Plantation Street with the school on it, to the Bishop of Worcester. By 1958, therefore, the Bishop owned the entire city block. The trial court and the Supreme Judicial Court both ruled that the Bishop holds full legal and equitable title to the entire block. *Fortin*, 416 Mass. at 790.

4. *The "promise"*. The Parishioners rest their entire argument upon an alleged promise. For present purposes, the substance of the alleged promise is not disputed. In the Parishioners' own words, "[t]he very substance of the Bishop's promise is the promise to keep the parish open". Brief of Plaintiffs-Appellants (to the Massachusetts Appeals Court) 25.

The determinative feature of this case is the *scope* of the alleged promise. The Parishioners do not allege, for example, that the Bishop promised to give them any interest in the real estate; they allege only that he promised not to close the parish of St. Joseph's Church.[1]

[1] The Bishop conceded only for summary judgment purposes that he made this promise. At trial the Bishop would prove that his representative promised to keep the church open *if* the Parishioners bore the cost of repairs and *if* the Parishioners presented a satisfactory feasibility study. Petition A-12, n.5.

SUMMARY OF ARGUMENT

1. This case does not present the question framed by the Parishioners. They pose a question based upon uniformity: may a state court apply neutral principles of law to *one* portion of a church property dispute without applying the same principles to *another* portion of the same church property dispute? The Parishioners argue that the Supreme Judicial Court, which applied neutral principles of law to determine the ownership of St. Joseph's Church, was obliged to apply the same principles to resolve a dispute over the Bishop's promise not to close the parish. *Infra*, 6-7.

The fallacy of the uniformity argument is that the two portions of the case are not uniform. One portion presents a straightforward issue of title to real estate. Neutral principles of trust and property law can be applied to resolve that issue. The other portion of the case differs fundamentally, because it is not a dispute over title to real estate. It is a dispute over a promise to refrain from merging one parish with another. Neutral principles of trust and property law cannot resolve the latter question. *Infra*, 6-8.

2. The question properly presented is whether the First Amendment bars adjudication of the promise-based claims. Those claims challenge the wisdom of a parish reorganization. This Court has held that the First Amendment precludes the civil courts from taking jurisdiction of a dispute over the reorganization of a diocese. *Serbian Eastern Orthodox Church* v. *Milivojevich*, 426 U.S. 694 (1976), *reh. denied*, 429 U.S. 873. No principled distinction can be drawn between the diocesan reorganization in *Milivojevich* and the parish reorganization in this case. Since this case represents a mainstream application of *Milivojevich*, no writ of certiorari should issue. *Infra*, 8-13.

The Parishioners insist that the Bishop promised to keep their parish open. In prior briefs they have admitted, however, that the civil courts *cannot* order a bishop to keep a parish open. This Court should not hear a case in which the petitioners seek to take a position they previously abandoned. *Infra*, 9-11.

3. The Court will find no special or important issue in the Parishioners' claim that the state court has condoned a form of episcopal despotism. The Supreme Judicial Court has not hesitated to take jurisdiction of church-related disputes, and its opinions reveal no special deference to episcopal authority. The Court's decision in the present case rests upon the well-settled principle that the civil courts may not intervene on *either* side of a dispute which involves not the ownership of property but the wisdom of an ecclesiastical decision. Issuing a writ of certiorari in such a case would not advance First Amendment jurisprudence. *Infra*, 13-19.

ARGUMENT

No Writ of Certiorari Should Issue, Because This Case Presents Neither the Question Framed by the Parishioners Nor Any Other Substantial Question.

A. *This Case Does Not Present the Question Framed by the Parishioners.*

The Parishioners have framed a question which, in the abstract, presents an interesting jurisprudential puzzle: may a civil court apply this Court's "neutral principles" analysis to one part of a church property dispute but not to another part? Petition 5. Unfortunately for the Parishioners, this case does not present that question.

The Supreme Judicial Court bifurcated the Parishioners' claims for good reason. The Court observed that the Parishioners made two quite different assertions: (1) that the Bishop refused to recognize the Parishioners' alleged equitable title to the property (Ownership Claims); and (2) that the Bishop refused to honor his promise not to merge the parish and close the church for worship (Promissory Claims). *Fortin*, 416 Mass. at 784-785. The Court perceived a sharp distinction between the Ownership Claims and the Promissory Claims.

The Ownership Claims raise mainstream issues of trust law and property law. These issues are amenable to analysis through "objective, well-established concepts of trust and property law familiar to lawyers and judges". *Jones* v. *Wolf*, 443 U.S. 595, 603 (1979). Using those familiar concepts, the Supreme Judicial Court took jurisdiction of the Ownership Claims and ruled that the Bishop holds full legal and equitable title to St. Joseph's Church. *Id.* at 790.

The Promissory Claims present a different picture. The most obvious difference is that the Bishop's promise did not address property ownership. The Bishop promised only that he would not merge the parish and not close the church. He did *not* promise that he would convey the property to the Parishioners or that he would surrender any incident of ownership. Nor do the Parishioners argue the contrary. They have admitted consistently and forthrightly that the Bishop promised only to keep the parish open.

In their appellate brief, the Parishioners summed up the Bishop's promise as follows: ". . . keeping the parish open was the substance of the Bishop's promise . . .". Brief of Plaintiffs-Appellants 24. If the Bishop broke that promise, the remedy would not be found in well-established concepts of trust and property law. The only effective remedy would

be to order the Bishop to keep St. Joseph's Church open for worship.[2]

The Supreme Judicial Court saw a constitutionally significant difference between a dispute over ownership of a church building and a dispute over keeping a parish church open for worship. *Fortin*, 416 Mass. at 785. One is a classic church property dispute which invites resolution under neutral principles of trust and property law. The other is not at all a property dispute; it is a disagreement over the wisdom of merging two parishes and designating which of the parish churches should be used for worship. The Promissory Claims, therefore, do not present a property dispute. They present a dispute over the reorganization of parishes, which is a purely ecclesiastical matter. *See Serbian Eastern Orthodox Diocese* v. *Milivojevich*, 426 U.S. at 721, discussed *infra* at 11-13.

The Parishioners disregard the fundamental difference between the Ownership Claims and the Promissory Claims. They frame the question presented to this Court as if this entire case involved a monolithic property dispute. By disregarding the difference between their claims, the Parishioners are able to pose a question which is intellectually interesting but is not germane to the present action. The only germane question is whether the Supreme Judicial Court properly declined to take jurisdiction over a claim that a bishop who holds full legal and equitable title to a parish church may be ordered to keep the church open for worship.

B. *No Writ Should Issue, Because the Decision of the Supreme Judicial Court Represents a Mainstream Application of the Holding of Serbian Eastern Orthodox Diocese* v. *Milivojevich.*

The Parishioners argue that the Supreme Judicial Court erroneously interpreted *Milivojevich* "to preclude civil jurisdic-

[2] The Parishioners do not contend seriously that they suffered any compensable damages.

tion of any action in the nature of contract or promissory estoppel against a Roman Catholic bishop by a Roman Catholic congregation." Petition 6. The short answer is that the Supreme Judicial Court neither reached that conclusion nor relied upon *Milivojevich* for it. The Supreme Judicial Court relied upon *Milivojevich* only for the following statement:

> To inquire into an alleged promise by the Bishop to keep a parish open or refrain from merging it with another parish was an impermissible intrusion into the Bishop's ecclesiastical authority.

Fortin, 416 Mass. at 785 (citing *Milivojevich*, 426 U.S. at 708-709).

This ruling does not purport to surrender jurisdiction over every contract claim and promissory estoppel claim made by a Roman Catholic congregation against its bishop; the ruling bars jurisdiction only over a specific promise to perform a specific ecclesiastical act.

For two distinct reasons, the ruling does not warrant further review. First, the ruling properly relies on *Milivojevich*. Second, the Parishioners have foreclosed themselves from challenging it.

1. The Parishioners Have Waived Any Claim That the Civil Courts Possess Jurisdiction to Enforce the Bishop's Promise.

During this litigation the Parishioners have made certain admissions. This Court should be made aware of them. To appreciate the Parishioners' admissions, however, one must appreciate the scope of the Bishop's alleged promise. In their state court appellate brief, the Parishioners summarized the promise as follows:

> The very substance of the Bishop's promise is the promise *to keep the parish open*.

Brief of Plaintiffs-Appellants 25 (emphasis added).

This unambiguous statement should be juxtaposed with the following admissions by the Parishioners:

> (1) In their own words, the Parishioners "*do not dispute or challenge the Bishop's ecclesiastical authority to disband the Roman Catholic ecclesiastical parish* or to determine any other matter of Roman Catholic doctrinal or procedural law. Plaintiffs contend only that defendant Bishop's closing of the ecclesiastical parish does not entitle defendant Bishop to ownership of the real estate . . .".

Plaintiffs' Opposition to Defendant's Motion for Summary Judgment 2-3 (emphasis added).

> (2) In the words of the motion judge, "Plaintiffs conceded at trail [sic] that the Bishop had the right and authority to merge the parishes."

Petition A-15.

> (3) In their owns words, "Parishioners concede that *it would be inappropriate for a civil court to order the Bishop to keep a parish open* as such would be an interference with his ecclesiastical authority."

Brief of Plaintiffs-Appellants 29 (emphasis added).

In their complaint, the Parishioners sought specific performance of the Bishop's alleged promise. In subsequent pleadings, however, the Parishioners admitted that no civil court could enter such an order.

By admitting that the Massachusetts courts could not specifically enforce the Bishop's alleged promise, the Parishioners foreclosed not only their demand for specific performance but also any demand for equitable relief arising from estoppel. A typical remedy for promissory estoppel is an injunction which compels the promisor to honor his promise. *See* Restatement (Second) of Contracts § 90. Such an injunction in the present action would be identical to an order for specific performance. By waiving any claim to an order for specific performance, therefore, the Parishioners have waived any claim for injunctive relief arising from estoppel.

This may explain why the Supreme Judicial Court gave relatively little attention to the Promissory Claims. *Fortin*, 416 Mass. at 785. The Court apparently recognized that the Parishioners had conceded a lack of jurisdiction by admitting that the Court could not order the parish kept open. The Supreme Judicial Court therefore paused over the issue only long enough to correct a broad jurisdictional ruling by the trial court. *Id.*

If this Court were to grant the petition, therefore, it would find itself in the position of reviewing an issue over which the Parishioners have conceded the civil courts lack jurisdiction.

B. *The Supreme Judicial Court Correctly Applied Milivojevich.*

The decision of the Supreme Judicial Court represents a mainstream application of *Milivojevich*. Granting the petition, therefore, would not afford this Court any opportunity to clarify the contours of the First Amendment.

In *Milivojevich*, 426 U.S. at 707, Bishop Dionisije sued to have himself declared the true diocesan bishop and to enjoin the hierarchy of his church from interfering with the property of his diocese. The hierarchy then commenced its own suit to confirm that Dionisije had been removed from office and to enjoin him from interfering with diocesan property.

This Court observed that the case was not primarily a property dispute. *Milivojevich*, 426 U.S. at 709. Whomever took office as diocesan bishop took control of diocesan property *ex officio*; the key issue, therefore, was the identity of the diocesan bishop. *Id.* at 709. "Resolution of the religious dispute over Dionisije's defrockment therefore determines control of the property. Thus, this case involves not a church property dispute but a religious dispute . . .". *Id.*

The Illinois courts had declared Dionisije's defrockment to be invalid and had reinstated him as diocesan bishop. This Court held that the church hierarchy, not the civil courts, were entitled to make that determination. *Id.* at 708. As a consequence, the hierarchy was allowed to decide, indirectly, who would control diocesan property; but "the civil courts must accept that consequence as the incidental effect of an ecclesiastical determination that is not subject to judicial abrogation . . .". *Id.* at 720.

The Illinois courts also had invalidated the hierarchy's reorganization of the diocese. *Id.* at 721. This Court made short work of that ruling. It held that "the reorganization of the Diocese involves a matter of internal church government, an issue at the core of ecclesiastical affairs . . .". *Id.* The First Amendment ensures that religious bodies can "decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Id.* at 721, citing *Kedroff* v. *St. Nicholas Cathedral*, 344 U.S. 94, 116 (1952).

No useful distinction can be drawn in civil law between the reorganization of a *diocese* and the reorganization of a *parish*. The Bishop chose to reorganize the parish of St. Joseph's Church by merging it with another parish, just as the bishops of Dionisije's church chose to reorganize his diocese by splitting it. Thus, the Bishop's action in the present case, no less than the hierarchy's action in *Milivojevich*, is "a matter of internal church government, an issue at the core of ecclesiastical affairs". *Milivojevich*, 426 U.S. at 721.

In one sense *Milivojevich* was a closer case than this one. *Both* parties in *Milivojevich* had commenced civil suits. Since both parties had invoked the jurisdiction of the civil courts, there was an argument that the courts should hear the case. *Milivojevich*, 426 U.S. at 725-726 (Rehnquist, J., dissenting). The present case is different. Here only one party, the Parishioners, has invoked the power of the civil courts; the Bishop has argued from the outset that the civil courts lack jurisdiction.

The Supreme Judicial Court rightly relied on *Milivojevich*, therefore, in ruling that the civil courts could not second-guess the Bishop's decision to close the parish. *Fortin*, 416 Mass. at 785. The only proper avenue for review of the Bishop's decision lies in an appeal to the tribunals of the Roman Catholic Church.

The record does not disclose whether the Parishioners have pursued such an appeal. Since the Bishop feels obliged to stay within the confines of the record, he will not comment further. The Bishop would not object, however, if the Parishioners chose to provide this Court with an accurate and complete account of any such appeal.

C. *This Case Presents No Reason for the Court to Revisit Jones* v. *Wolf*.

The Parishioners take an expansive view of *Jones* v. *Wolf*, 443 U.S. 595 (1979). They argue that a writ of certiorari should issue because, under *Jones*, the civil courts "must exer-

cise jurisdiction" over the Promissory Claims. Petition 10. To support this argument, the Parishioners label the Promissory Claims as claims in "contract".

The Supreme Judicial Court is well aware that the First Amendment does not shield religious organizations from all civil suits for breach of contract. *See, e.g., Willits* v. *Roman Catholic Archbishop of Boston*, 411 Mass. 202, 206 n.4 (1991) (court rejects argument that *Milivojevich* bars jurisdiction over wrongful discharge suit). The Court equally recognizes that religious organizations may be sued in tort. *See, e.g., Alberts* v. *Devine*, 395 Mass. 59, 72 (1985); *Murphy* v. *I.S.K.Con. of New England, Inc.*, 409 Mass. 842, 851 (1991).

The Supreme Judicial Court has taken jurisdiction of many controversies involving churches and has declined to take jurisdiction of many others. Whether the Court takes or declines jurisdiction depends not upon a case's label but upon its substance. *See, e.g., Gordotzer* v. *Kraft*, 360 Mass. 743, 744 (1972) (defamatory statement, although made in religious context, creates justiciable claim of libel); *United Kosher Butchers Association* v. *Associated Synagogues of Greater Boston, Inc.*, 349 Mass. 595, 599 (1965) (vendors' suit for interference with business not justiciable where outcome depends on religious authorities' refusal to designate products as kosher).

The Supreme Judicial Court consistently rules that the key jurisdictional factor is "the nature of the central issue to be resolved". *Gordotzer*, 360 Mass. at 744; *United Kosher Butchers Association*, 349 Mass. at 599. The Court refuses to decide cases in which the central issue is a religious matter, even where the plaintiff's claim purportedly sounds in contract. *See, e.g., Grosvenor* v. *United Society of Believers*, 118 Mass. 75, 91 (1875) (no jurisdiction where alleged breach of contract was deviation from Shaker doctrine); *see also Solomon* v. *Congregation Tiffereth Israel*, 344 Mass. 755, 756 (1962) (no jurisdiction over alleged breach of Mosaic law). The same

principle bars jurisdiction over cases which, although designated as claims in tort, require resolution of a dispute over religious doctrine. *See, e.g., Carter* v. *Papineau*, 222 Mass. 464, 467-468 (1916) (no jurisdiction over allegedly tortious exclusion from religious services); *see also Murphy* v. *I.S.K.Con. of New England, Inc.*, 409 Mass. at 851 (evidence of defendant's unorthodox religious beliefs inadmissible to prove tort).

The Court has not hesitated, however, to decide church-related cases in which the central issue lies within the competency of civil courts. *See, e.g., McNeilly* v. *First Presbyterian Church*, 243 Mass. 331, 338-339 (1923) (court will decide church property dispute which turns upon law of charitable corporations rather than canon law); *Moustakis* v. *Hellenic Orthodox Society*, 261 Mass. 462 (1928) (court will *not* decide who is true bishop under canon law but *will* decide whether members of charitable corporation were properly stricken from membership list); *Mitchell* v. *Albanian Orthodox Diocese*, 355 Mass. 278, 282 (1969) (court *will* decide who is true bishop where entitlement to office depends only upon bylaws of corporation); *Antioch Temple, Inc.* v. *Parekh*, 383 Mass. 854, 864 (1981), *cert. denied*, 474 U.S. 1014 (court awards property to local church determined to be congregational).

The Massachusetts courts have no practice of deferring to what the Parishioners call "episcopal despotism". Petition 10. Bishops of several churches, including the Roman Catholic Church, have seen the Massachusetts courts decline to enforce episcopal orders. *See, e.g., Canadian Religious Association* v. *Parmenter*, 180 Mass. 415, 424 (1902) (trustees of parish church corporation must follow law of trusts despite contrary order by Roman Catholic bishop); *Greek Orthodox Community* v. *Malicourtis*, 267 Mass. 472, 483 (1929) (local Orthodox church not obliged to follow orders of Metropolitan); *Antioch Temple, Inc.* v. *Parekh*, 383 Mass. at 857 (local church controls

property dispite contrary view of Apostolic bishop); *Primate and Bishops' Synod of the Russian Orthodox Church Outside Russia* v. *Russian Orthodox Church of the Holy Resurrection, Inc.*, 35 Mass. App. Ct. 194 (1993), *further app. rev. granted*, 416 Mass. 1109 (local church free to change affiliation despite contrary order by Orthodox bishops).

In *Wheeler* v. *Roman Catholic Archdiocese of Boston*, 378 Mass. 58, 63 (1979), *cert. denied*, 444 U.S. 899, the Court held that the First Amendment forbade inquiry into a property dispute within a hierarchical church, citing *Milivojevich*. The Supreme Judicial Court decided *Wheeler* two months before *Jones*, however. When the Court next faced a church property dispute, it recognized that *Jones* had removed any First Amendment bar to jurisdiction in such a case. *Antioch Temple, Inc.* v. *Parekh*, 383 Mass. at 866. The Court expressly confirmed this recognition in the present case. *Fortin*, 416 Mass. at 787-788.

If the Supreme Judicial Court were inclined to countenance episcopal despotism, as the Parishioners contend, then the Court would not have taken jurisdiction of the Ownership Claims. It would have declined to take jurisdiction because the Roman Catholic Church is hierarchical.

> The Bishop is correct when he states that, if we considered the present dispute only in terms of the traditional structural approach, we would not take jurisdiction. This is so because (1) the Roman Catholic Church is hierarchical and (2) it maintains an internal system of tribunals for resolution of disputes. Such facts were presented in a sworn affidavit of the Bishop which was appended to his motion for summary judgment.
>
> *Fortin*, 416 Mass. at 787.

Despite the Bishop's urging, the Court proceeded to take jurisdiction and decide the Ownership Claims using the neutral principles analysis of *Jones*. *Id.* at 788. This process demonstrates no favoritism or preference toward hierarchical churches in general or Roman Catholic bishops in particular. By departing from its customary hierarchical/congregational analysis, the Court actually went out of its way to hear the Parishioners' Ownership Claims. This indulgence, however, did not oblige the Court to apply *Jones* to the Promissory Claims.

Jones neither compels nor permits a court to use neutral principles of law in evaluating a bishop's promise to keep a parish open. See *Jones*, 443 U.S. at 602. Even if the Promissory Claims were "contractual", as the Parishioners say, *Jones* would not apply because it addresses property disputes, not contract disputes.

The Parishioners no longer deny that the Bishop holds full legal and equitable title to St. Joseph's Church; their petition to this Court challenges neither the methodology nor the outcome of the Supreme Judicial Court's decision concerning the Ownership Claims. As a result, there is no "property dispute" left to be resolved.

The methodology of *Jones* easily accomodates the Ownership Claims, but it cannot accommodate the Promissory Claims. The neutral principles method involves examination of "the language of deeds, the terms of the local church charters, state statutes governing the holding of church property, and the provisions in the constitution of the general church concerning the ownership and control of church property." *Jones*, 443 U.S. at 603. This examination focuses upon factors determinative of title to property. No such issue remains in the present case, because the Bishop holds title. The only issue left is the Bishop's promise, and *Jones* does not prescribe a regimen for resolving such an issue.

For the Parishioners' view of *Jones* to make any sense, this Court would have to hold not only that *Jones* extends to non-property disputes but also that *Jones* overruled *Milivojevich*. *Milivojevich* is an insurmountable obstacle, because it holds in part that a civil court has no jurisdiction to hear a dispute over the reorganization of church government. *Milivojevich*, 426 U.S. at 721. The heart of the Promissory Claims, in the Parishioners' own words, is a "promise to keep the parish open". This matter is as much "at the core of ecclesiastical affairs" as the reorganization of dioceses in *Milivojevich*. *Id.* Thus *Milivojevich* controls the present case — unless it was overruled by *Jones*.

Jones did not overrule *Milivojevich*. Indeed, *Jones* repeatedly cites *Milivojevich* approvingly.[1] *Jones*, 443 U.S. at 602, 603, 604, 605. Furthermore, one would not expect *Jones* to overrule *Milivojevich*, because the two cases dealt with different issues. *Milivojevich* dealt with an ecclesiastical dispute having incidental consquences for the control of property. *Jones* dealt with a property dispute having incidental ecclesiastical consequences. There is no inconsistency between the cases, and there is nothing in *Jones* to suggest that the First Amendment allows neutral-principles jurisdiction over core ecclesiastical questions.

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[1] The Parishioners take pains to quote the *Milivojevich* dissent authored by Justice Rehnquist. Petition 9. The *Milivojevich* dissenters, however, accepted the principle that civil courts must not intrude in favor of either side in a religious dispute. *Milivojevich*, 426 U.S. at 733 (Rehnquist, J., dissenting). The Chief Justice later joined a majority opinion which cited *Milivojevich* for precisely that principle. *Employment Division, Department of Human Resources of Oregon* v. *Smith*, 110 S.Ct. 1595, 1599 (1990).

The *Milivojevich* dissenters were chiefly concerned that lower courts would feel obliged to enforce blindly any and every "decree of a church court", even a decree flawed by and obvious procedural error. *Milivojevich*, 426 U.S. at 727. The present case does not create that risk. There is no church court decree to be enforced, and the Parishioners have alleged no procedural error in the Bishop's decision.

The Parishioners' suggestion that neutral principles should be applied outside the field of church property disputes is not novel. It is an old idea which this Court has expressly discredited. In 1975 the Illinois Supreme Court attempted to apply neutral principles to judge the validity of the reorganization of Bishop Dionisije's diocese. *Milivojevich*, 426 U.S. at 721. This Court emphatically rejected that attempt. *Id.* Contrary to the Parishioners' contention, therefore, the present case presents no reason for this Court to revisit either *Jones* or *Milivojevich*.

To avoid the analogy to *Milivojevich*, the Parishioners characterize the Promissory Claims as non-religious. They describe them as "no less secular" than the Ownership Claims. Petition 8. Stretching even farther, the Parishioners assert that the Bishop's promise not to close the parish is within a class of "secular-based promises made in secular contexts". Petition 10. The short answer is that neither the promise nor the context was secular. When a bishop engages his parishioners in a discussion concerning the future of their parish as an ecclesiastical entity, the context is not secular. And when he makes a promise concerning the future of the parish as an ecclesiastical entity, the promise is not secular; it goes to the core of ecclesiastical governance.

The Parishioners are not without a remedy. If the Bishop has acted improperly, then the Parishioners may appeal to the canon law courts, where there exists an appellate tribunal competent to decide a dispute over the merger of parishes. The Parishioners' remedy with respect to the Promissory Claims lies in that court, not this one.

CONCLUSION

The Parishioners' petition presents neither the question they have framed nor any other special or important question. No writ should issue.

Respectfully submitted,

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